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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 ALEXIS ROSENFIELD, et al,

12 C 12-1647 MEJ

13 Plaintiffs,

14 v.

15 U.S. OFFICE OF PERSONNEL
MANAGEMENT,

16 Defendant.

17 STIPULATION FOR COMPROMISE
SETTLEMENT AND RELEASE;
[PROPOSED] ORDER

18 It is hereby stipulated by and between the undersigned Plaintiffs Alexis Rosenfield,
Barbara Goodyear and Stephen Rosenfield (Plaintiffs) and the U.S. Office of Personnel
19 Management (OPM), as follows:

20 WHEREAS, Plaintiffs filed the above-captioned action on April 3, 2012 pursuant to the
21 Federal Employee Health Benefits Act, 5 U.S.C. §§ 8901 et seq., and the Administrative
22 Procedures Act, 5 U.S.C. § 706.

23 WHEREAS, OPM answered on July 6, 2012 and denied any liability;

24 WHEREAS, Plaintiffs and OPM wish to avoid any further litigation and controversy
25 and to settle and compromise fully any and all claims and issues that have been raised, or could
26 have been raised in this action, which have transpired prior to the execution of this Settlement
27 Agreement ("Agreement");

28
Stipulation & (Proposed) Order
Rosenfield, et al. V. OPM
C 12-1647 MEJ

1 NOW, THEREFORE, in consideration of the mutual promises contained in this
2 Agreement, and other good and valuable consideration, receipt of which is hereby
3 acknowledged, the Parties agree as follows:

4 1. **Agreement to Compromise Claims.** The parties do hereby agree to settle and
5 compromise each and every claim of any kind, whether known or unknown, arising directly or
6 indirectly from the acts or omissions that gave rise to the above-captioned action under the
7 terms and conditions set forth in this Agreement.

8 2. **Definition of U.S. Office of Personnel Management or OPM.** As used in this
9 Agreement, the U.S. Office of Personnel Management or OPM shall include its divisions,
10 departments, successors, assigns, directors, officers, agents, employees, and representatives.

11 3. **Settlement Amount.** Because the exact settlement amount cannot be determined at
12 this time, the parties have agreed to the following:

13 A. Methodology: Within 7 days of the date of this Stipulation, OPM will
14 request United Health Care (UHC) to issue payment to Plaintiffs in full and final satisfaction of
15 all claims for additional therapy sessions for which Plaintiffs seek reimbursement using the
16 following methodology:

17 (i) UHC will review the date of service to determine if a claim for group
18 or family therapy on that day has already been billed and reimbursed.

19 (ii) If UHC has not previously reimbursed a claim for the date of
20 service in question, UHC will calculate the reimbursement amount as 60% of the billed charge
21 until the catastrophic limit is met.

22 (iii) Once the catastrophic limit is met, UHC increased the
23 reimbursement amount to 100% of the billed charge for the claimed date of service.

24 B. Form of Payment: The amount amount will be paid by UHC via paper
25 checks made payable to Barbara Goodyear as soon as possible after final execution of this
26 Stipulation. If Plaintiffs find the final aggregate amount of all checks to be unsatisfactory,
27 Plaintiffs agree to return all checks to OPM within seven days of receipt. If Plaintiffs return all

1 checks or any check, they shall be considered to have rejected the settlement and will be
 2 obligated to return all checks.

3 C. Acceptance of Payment: Plaintiffs' acceptance of the checks issued by UHC
 4 shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of
 5 action of whatsoever kind and nature, arising from, and by reason of any and all known and
 6 unknown, resulting from the subject matter of this settlement.

7 4. Release. In exchange for the promises made by OPM in this Stipulation, Plaintiffs
 8 hereby release and forever discharges OPM from any and all claims, demands, obligations,
 9 actions causes of action, damages, costs, expenses and compensation of any nature whatsoever,
 10 both legal and equitable, and whether for compensatory or punitive damages, which arise on
 11 account of the allegations contained in the action. It is understood and agreed that Plaintiffs
 12 will not pursue, either at present or in the future, any legal, equitable, administrative or any
 13 other remedy whatsoever respecting the allegations contained in the action.

14 5. Dismissal of Action. Pursuant and subject to the terms of this Stipulation and
 15 Compromise Settlement and Release, this action, including all claims which have been asserted
 16 or could have been asserted, is dismissed with prejudice. Consistent with paragraph 3
 17 (Settlement Amount), should Plaintiffs reject the final amount tendered in settlement of the
 18 disputed claims, Plaintiffs may promptly file a motion to vacate the dismissal and reopen the
 19 case.

20 6. No Admission of Liability. This stipulation for compromise settlement is not
 21 intended to be, and should not be construed as, an admission of liability or fault on the part of
 22 the United States, and it is specifically denied that it is liable to the Plaintiff. This settlement is
 23 entered into by all parties for the purpose of compromising disputed claims and avoiding the
 24 expenses and risks of further litigation.

25 7. Parties Bear Their Own Costs. It is also agreed, by and among the parties, that the
 26 respective parties will each bear their own costs, fees, and expenses and that any attorney's fees
 27 owed by the Plaintiff will be paid out of the Settlement Amount and not in addition thereto.

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2 8. Authority. The persons signing this Agreement warrant and represent that they
3 possess full authority to bind the persons on whose behalf they are signing to the terms of the
4 settlement.

5 9. Waiver of California Civil Code § 1542. The provisions of California Civil Code
6 Section 1542 are set forth below:

7 " A general release does not extend to claims which the creditor
8 does not know or suspect to exist in his or her favor at the time
9 of executing the release, which if known by him or her must have
10 materially affected his or her settlement with the debtor."

11 Plaintiffs having been apprized of the statutory language of Civil Code Section 1542 and fully
12 understanding the same, nevertheless elects to waive the benefits of any and all rights they
13 may have pursuant to the provision of that statute and any similar provision of federal law.
14 Plaintiffs understand that, if the facts concerning Plaintiffs claims and the liability of the
15 government for damages pertaining thereto are found hereinafter to be other than or different
16 from the facts now believed by them to be true, the Agreement shall be and remain effective
17 notwithstanding such material difference.

18 10. Integration. This instrument shall constitute the entire Agreement between the
19 parties, and it is expressly understood and agreed that the Agreement has been freely and
20 voluntarily entered into by the parties hereto. Settlement The parties further acknowledge that
21 no warranties or representations have been made on any subject other than as set forth in this
22 Agreement. This Agreement may not be altered, modified or otherwise changed in any respect
23 except by writing, duly executed by all of the parties or their authorized representatives.

24 IT IS SO STIPULATED:

25 Dated:



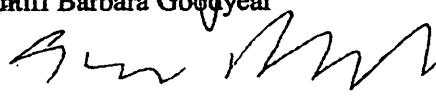
Plaintiff Alexis Rosenfield

26 Dated:



Plaintiff Barbara Goodyear

27 Dated:

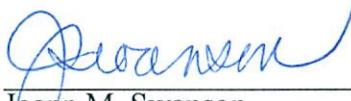


Barbara Goodyear

1 Plaintiff Stephen Rosenfield

2 Dated: 8-30-12

3 MELINDA HAAG
4 UNITED STATES ATTORNEY

5 
6 Joan M. Swanson
7 Assistant United States Attorney
8 Attorney for Defendant OPM

9 PURSUANT TO STIPULATION, IT IS SO ORDERED AND THIS CASE IS
10 DISMISSED WITH PREJUDICE.

11 Dated: 9/5/2012

12 
13 HON. MARIA-ELENA JAMES
14 United States District Judge